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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,494	01/28/2002	William P. Cramer	20011CR	2287
7590 Herman H. Bains Attorney 6101 Tracy Avenue Minneapolis, MN 55436		01/09/2008	EXAMINER LAGMAN, FREDERICK LYNDON	
			ART UNIT 3672	PAPER NUMBER
			MAIL DATE 01/09/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/056,494	<b>Applicant(s)</b> CRAMER, WILLIAM P.	
	<b>Examiner</b> Frederick L. Lagman	<b>Art Unit</b> 3672	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, and 4-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***BPAI***

1. As to the Decision and Remand of the BPAI filed 4/16/07, a new grounds of rejection are provided for claims 1, 2, 4, and 5.
2. Furthermore, claims 4 and 6 are still rejected as applied and affirmed by the BPAI.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over "Pipeline and Appurtenances," Policies for Accommodation of Utilities on Highway Right-of-Way, Transportation Research Board, pp. 4-8, © 1976 (hereinafter Pipeline and Appurtenances).

Pipeline and Appurtenances discloses that Hawaii permits laying a longitudinally extending pipeline below the ground surface of the median or shoulder (i.e., right-of-way) of highways (Pipeline and Appurtenances 4, 5). Pipeline and Appurtenances also appears to disclose that pipelines may include petroleum pipelines (Pipeline and Appurtenances 4). The claim features of connecting the pipeline to a source of petroleum (claim 1) or "a source of an energy product" (claim 4), and connecting the pipeline to an outlet line extending at an angle below the ground for supplying

distributors and end users with petroleum appear to be inherent or obvious features. These features seem to be inherent because a pipeline needs to be connected to a source of the material it will be conveying and an underground main pipeline necessarily must have underground branches that supply end users in order for the pipeline to function.

In the alternative, it appears that it would have been obvious at the time the invention was made to one having ordinary skill in the art to modify Pipeline and Appurtenances' pipeline to include connecting the pipeline to a source of petroleum (claim 1) or "a source of an energy product" (claim 4), and connecting the pipeline to an outlet line extending at an angle below the ground for supplying distributors and end users with petroleum because a pipeline needs to be connected to a source of the material it will be conveying and an underground main pipeline must have underground branches that supply end users in order for the pipeline to function as intended in the reference.

Regarding the claim feature that the pipeline extends "throughout a major portion of the length of the interstate highway" (claim 1 and claim 4), we note that from the Pipeline and Appurtenances' disclosure to place pipelines in the median or shoulder (i.e., the right-of-ways) of the interstate, there are only two possible embodiments for such placement: the pipeline extends throughout either a major or a minor portion of the length of the interstate highway. In view of the limited class of embodiments (i.e., a major or minor highway length) one of ordinary skill in the art would have immediately envisaged each embodiment (i.e., a major or minor highway length) of the limited class,

such that Pipeline and Appurtenances' disclosure appears to anticipate Appellant's claims. *Petering*, 301 F.2d at 681,133 USPQ at 280.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Pipeline and Appurtenances," Policies for Accommodation of Utilities on Highway Right-of-Way, Transportation Research Board, pp. 4-8, © 1976 (hereinafter Pipeline and Appurtenances) in view of Hayward US 3,870,063.

As noted above Pipeline and Appurtenances appears to disclose all the features of Appellant's independent claims 1 and 4. However, Pipeline and Appurtenances does not disclose "providing pumping stations for each petroleum pipeline and interconnecting each petroleum pipeline to a pumping station for maintaining the pressure in the petroleum pipeline" (claim 2 and 5).

Hayward discloses that it was known to have pumping stations at various intervals along the pipeline to maintain the proper pressure and flow of the petroleum (Hayward, col. 2, ll.3-15). It appears that it would have been prima facie obvious at the time the invention was made to one of ordinary skill in the art to combine Hayward's pumping stations with Pipeline and Appurtenances' underground pipeline in order to

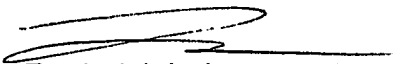
maintain the proper flow and pressure of the petroleum flowing through the pipeline as taught by Hayward (col. 2, ll. 3-15).

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick L. Lagman whose telephone number is 571-272-7043. The examiner can normally be reached on Monday-Friday 5:30AM-2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on 571-272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Frederick L. Lagman  
Primary Examiner  
Art Unit 3672

FLL